IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

FIRST APPEAL NO.2029 OF 2006

Pramila Suman Singh Thakur & Anr. .. Appellants

Versus

Sudhakar Baburao Lagad & Ors. .. Respondents

Mr. K.K.Tated for appellants

Ms. S.A.Mhadgat for respondent nos.1 to 3, 5 and 6

Mr. A.R.Patil, AGP for respondent no.4

CORAM : S.B.DESHMUKH, J.

DATE : 29TH SEPTEMBER, 2006

P.C.:

1. Heard the learned counsel for the appellants as well as Respondent nos.1 to 3 and 4 & 6 and also the learned AGP for respondent no.4.

2. Admit.

3. The Appeal is taken up for hearing with the

consent of the parties.

4. This appeal impugns the judgment and order passed by the learned Charity Commissioner, Maharashtra State, Mumbai on 13.4.2005 in Application No.14 of 2004 filed under Section 47 of the Bombay Public Trust Act (hereinafter referred to as the "said Act, 1950" for short). The appellants were not party to the Application No.14 of 204. This Application No.14 of 2004 was filed by the Respondent Nos.1, 2 and 3. The Respondent no.5 is permitted to be joined as Respondent by this Court during the pendency of this appeal.

5. The learned counsel for the appellants has invited my attention to the order passed by the learned Charity Commissioner, Mumbai, which is impugned in this appeal. The Charity Commissioner proceeded on the footing that all the trustees have been expired and there is nobody to carry out the objects of the trust and therefore, outsiders have encroached on the trust properties and entire future of the trust is in doldrums and its valuable proprieties are in danger of being wasted, damaged and wrongfully alienated. The learned counsel for the appellants has also referred two copies of Schedule-III

which are filed on record along with Civil Application. Exhibit-A, is one of the copy, showing the name of Kondaji @ Baburao Ramchandra Lagad and Pandurang Yeshwant Killekar as well as Yeshwant Ramchandra Lagad as trustees. In Column No.2, it is mentioned that demise of Nos.1 and 2 i.e. Kondaji @ Baburao Ramchandra Lagad and Pandurang Yeshwant Killekar, is the reason for occurring the change. In column no.3, it is mentioned that "To appoint Smt. Pramila Suman Singh Thakur as Trustee". Stamped order is also appearing on the Exh.A. It is mentioned in the Stamped Order that "In view of demise of Mr.Baburao Ramchandra Lagad and Mr.Pandurang Yeshwant Killekar their names are liable to be deleted. But name of Mr.yeshwant Ramchandra Lagad cannot be deleted. Change Report is partly allowed. Deletion of deceased No.1 and 2 from Schedule-I of Trust." This order seems to have been passed on March 21, 2001. Another document Exhibit-B is a extract of Schedule-III. This document also refers name of trustees as (1) Kondaji @ Baburao Ramchandra Lagad (2) B.Y.Killekar and (3) Yeshwant Ramchandra Lagad. In column no.2, it is mentioned that demise of two trustees and invalidity of one respectively due to old age. This change report, is recorded by the authority i.e. Asstt. Charity Commissioner on 31.7.2003. It is also mentioned

in this document that Kondaji @ Baburao Ramchandra Lagad, P.Y.Killekar and Yeshwant Ramchandra Lagad to Smt. Pramila Suman Singh Thakur. This entry is in column no.1 i.e. nature of change. One more document, copy of the extract of PTR Certificate no.3 is also on record. In this document under head/column no.1 it is mentioned that this is a matter of addition of trustees. First trustee shown is Yeshwant Ramchandra Lagad and Pramila Suman Singh Thakur and thereafter it is mentioned to join Shri Subhash Venkatrao Rajurkar. There is an order on this document passed by the Charity Commissioner on 29.8.2005 regarding acceptance of the change Report.

6. The learned counsel for the respondent nos.1, 2, 3 and 5 submits that, according to their information and knowledge, no trustee was surviving on the date of filing of Application under Section 47 i.e. on May 24, 2004. According to her, these trustees were not joined as party to the application. The scheme of Section 47, undisputedly, mandates hearing of the parties. This provision is laid down under sub-Section 2 of Section 47 of the said Act, 1950. From the record, it appears that appellant no.1 Pramila Suman Singh Thakur was trustee of the Trust on the date of filing of the application. It is

also clear from the document on record that appellant no.2 Subhash Rajurkar was subsequently appointed as Trustee and the extract dated 29.8.2005 shows such appointment of appellant no.2. In this background, the observation of the learned Charity Commissioner, Mumbai that there were no trustees on the date of filing of the application under Section 47 of the Act, is not in accordance with the record maintained by the same organisation i.e the Charity Commissioner. The appellants were not heard on the date of passing of the order. It depicts that without giving opportunity or being heard to the appellants and/or trustees of the trust concerned on the date of filing of Application No.14 of 2004, the order impugned came to be passed by the learned Charity Commissioner, Mumbai. The consequence of this order is in fact removal of the appellants and/or persons officiating as trustees without giving opportunity to be heard to them. In this view of the matter, I am inclined to allow this appeal and by setting aside the order passed by the learned Charity Commissioner on 15.4.2005 in Application No.14 of 2004 with direction to reconsider the said application afresh, in accordance with the provisions of law and after giving an opportunity of being heard to the appellants/trustees of the trust concerned.

7. In the result, first appeal is partly allowed. The judgment and order passed by the Charity Commissioner in Application No.14 of 2004 is quashed and set aside and matter is remanded back to the Charity Commissioner for hearing afresh. The learned Charity Commissioner shall hear the appellants/respondent nos.1 to 3, 5 and 6 as well as, if any, trustee, duly appointed and recorded with the Asstt. Charity Commissioner and thereafter pass appropriate orders. Parties to this appeal to appear before the Charity Commissioner on 18th October, 2006.

8. The learned counsel Mr.K.K.Tated, on instructions, makes a statement that the appellants, would not take major policy decision till the decision of remanded application, by the Charity Commissioner of Mumbai.

9. The Charity Commissioner shall decide the application within a period of three months. The learned Charity Commissioner shall also decide the revision application Nos.3, 4, 5 and 6 of 2006 within the said period.

10. Appeal is disposed of in above terms with no

costs.

(S.B.Deshmukh,J.)